

STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

Office of Financial and Insurance Regulation
Petitioner

v

David E. Echols, Sr.
Respondent

Enforcement Case No. 08-6564

For the Petitioner:

Marlon F. Roberts
Office of Financial & Insurance Regulation
P.O. Box 30220
Lansing, MI 48909-7720

For the Respondent:

David E. Echols
[REDACTED]
[REDACTED]
[REDACTED]

Issued and entered
this 23rd day of December 2008
by Ken Ross
Commissioner

FINAL DECISION

On October 21, 2008, Chief Deputy Commissioner Stephen R. Hilker issued an Order Referring Complaint for Hearing and Order to Respond in this case. The Order to Respond required Respondent to take one of the following actions within 21 days: agree to a resolution of the case, file an answer to the allegations stated in the complaint, request an adjournment, or file a statement that Respondent plans to attend the hearing. On November 3, 2008, Respondent filed his response.

On November 20, 2008, the Petitioner filed a Motion for Summary Decision and to Stay Proceeding pursuant to Insurance Bureau Hearing Rule 11, 1983 AACSR 500.2111, asserting that there is no genuine issue as to any material fact in this case and that Petitioner was,

therefore, entitled to a decision in its favor as a matter of law. The motion was mailed to Respondent on November 20, 2008. Under Insurance Bureau Hearing Rule 7(5), 1983 AACRS R 500.2107(5), service was completed three business days after mailing – November 25, 2008. A party has seven days in which to file a reply to a motion. Insurance Bureau Hearing Rule 13, 1983 AACRS R 500.2113. Respondent did not file a response to Petitioner's motion.

OFIR hearing rule 11 provides:

A party may move for a summary decision in the party's favor upon any 1 of the following grounds:

- (a) The commissioner lacks jurisdiction over the person or the subject matter.
- (b) The opposing party has failed to state a claim upon which relief can be granted.
- (c) There is no genuine issue as to any material fact and the moving party is therefore entitled to a decision in that party's favor as a matter of law.

It is appropriate that the matter be resolved by summary decision under rule 11 because there are no genuine issues of material fact in this case. The following facts are not in dispute:

- Respondent was convicted in Michigan in 1977 of two felonies: a firearms offense (MCL 750.227) and possession of heroin (MCL 335.341).
- Respondent applied for a Michigan insurance producer license in April 2007 and was issued the license by the staff of the Office of Financial and Insurance Regulation ("OFIR") on June 28, 2007.

The only issue necessary to resolve this case is whether the Respondent met the minimum licensing requirements of Section 1205(1) of the Michigan Insurance Code of 1956, ("the Code") as amended, MCL 500.1205(1). The section provides:

- (1) A person applying for a resident insurance producer license shall file with the commissioner the uniform application required by the

commissioner and shall declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. An application for a resident insurer producer license shall not be approved unless the commissioner finds that the individual meets all of the following:

* * *

(b) Has not committed any act that is a ground for denial, suspension, or revocation under section 1239.

Section 1239(1)(f) of the Code states:

In addition to any other powers under this act, the commissioner may place on probation, suspend, revoke, or refuse to issue an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions for any 1 or more of the following causes:

* * *

(f) Having been convicted of a felony.

Because Respondent has been convicted of a felony, he is not qualified to hold an insurance producer license. The question of licensure ends here; the Commissioner does not have the discretion to approve an application where an applicant has been convicted of a felony. Granting Respondent a Michigan insurance producer license was an error on the part of OFIR staff. The license was issued in contravention of the Code provisions cited above. Issuing the license was also inconsistent with the licensing policy of OFIR as stated in prior administrative hearings. Since May 2004, when the Commissioner issued the final decision in *Mazur v Office of Financial and Insurance Services* (Case No. 03-384-L; Docket No. 2003-1515), it has been the formally stated policy of OFIR that insurance producer licenses cannot be issued to individuals with felony convictions.

When an error in licensing practices is discovered, the remedy is to correct the error and revoke the license. See *Elliott v Liquor Control Commission*, 339 Mich 78 (1954), and *Kassab v Acho*, 150 Mich App 104 (1986).

Petitioner's motion is granted. The factual allegations and conclusions of law stated in the complaint are adopted and made part of this Final Decision.

ORDER

The hearing scheduled for January 21, 2008 is cancelled.

In accordance with sections 1205(1) and 1239(1) of the Michigan Insurance Code,
Respondent's insurance producer license is revoked.

A handwritten signature in black ink, appearing to be 'K. Ross', written over a horizontal line.

Ken Ross
Commissioner